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ARLENE E. DAY
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Plaintiff In Pro Se

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
MEDFORD DIVISION

ARLENE E. DAY

Plaintiff,

vs.

COUNTRYWIDE HOME LOANS INC., agent
for COUNTRYWIDE BANK N.A., BANK OF
AMERICA, MERS, AMERICAN TITLE
INSURANCE COMPANY, RECONTRUST
COMPANY, N.A., BAC Home Loan
Servicing, LP

Defendants

) Case No.: 1:10cv 3137-CL
)
) COMPLAINT FOR FRAUD UNDER TILA
) 1606-1667f, RESPA, HOEPA, PREDATORY
) LENDING, BROKEN CHAIN OF TITLE,
) WRONGFUL FORECLOSURE, REQUEST FOR
) JUDICIAL NOTICE,
) PRELIMINARY INJUNCTION
) TEMPORARY RESTRAINING ORDER
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Plaintiff Arlene E. Day In Pro Se hereby allege as follows:

PARTIES

1. Defendant Countrywide Home Loans is at all times herein mentioned
was, a corporation organized and existing under the laws of New
York, doing business in Central Point, Oregon.

1
2 2. Defendant Countrywide Bank N.A. is, and at all times herein
3 mentioned was, a business entity of unknown form, doing business
4 in Jackson County, Oregon.

5 3. Mortgage Electronic Registration Systems ("MERS"), is a Delaware
6 corporation with its principal place of business in the State of
7 Virginia.

8 4. Bank of America Corporation, is a Delaware corporation with its
9 principal place of business in the State of North Carolina,
10 County of Mecklenburg.

11 5. American Title Insurance Company of Oregon, is business entity of
12 unknown form, doing business in Portland, Oregon.

13 6. Recontrust Company N.A. is a business entity of unknown form,
14 doing business in Simi Valley, California.

15 7. BAC Home Loans Servicing, LP, is a business entity of unknown
16 form, doing business in Los Angeles, California.

17 8. Plaintiff is informed and believe and based on such information
18 and belief aver that Defendants Countrywide Home Loan,
19 Countrywide Bank N.A. defendants 1-7, inclusive, and, each of
20 them are and at all times have been, the agents, service or
21 employees of each other, purporting to act within the scope of
22 said agency, service or employment in performing the acts
23 omitting to act as averred herein. Bank of America, BAC Home
24 Loan Servicing, LP, MERS, American Title Insurance Company and
25 Recontrust Company N.A. and defendants 1 through 7, inclusive,
are hereinafter collectively referred to as the "Foreclosing
Defendants."

1 9. Each of the Defendants named herein are believed to, and are
2 alleged to have been acting in concert with, as employee, agent,
3 co-conspirator or member of a joint venture of, each of the other
4 Defendants, and are therefore alleged to be jointly and severally
5 liable for the claims set forth herein, except as otherwise
6 alleged.

7 **GENERAL ALLEGATIONS**

8 10. Prior to February 16, 2007, Plaintiff purchased certain
9 real
property commonly known as (the :Subject Property).

10 11. On or about February 16, 2007, plaintiff refinanced the
11 loan on the Subject Property through Countrywide Home Loans
12 and executed a promissory note in favor of Countrywide Home
13 Loans, Inc. The note was secured by a deed of trust with
MERS, Inc. as grantee.

14 12. On or about February 16, 2007, Countrywide Home Loans, Inc.
15 executed a Deed of Trust and Request For Notice of Default, the
16 document were not signed by plaintiff nor notarized or recorded
17 until June 24, 2010.

18 13. Plaintiff made each payment due on the new loan until
19 December 07, 2009, the last payment on the 2nd mortgage was made
20 on 10/06/2009.

21 14. Plaintiff is unsure when Bank of America acquired the
22 servicing rights to Plaintiffs' loan from Countrywide Home Loans
23 Inc. Plaintiff continued to make her payment but now remitted
them to Bank of America.

24 15. On or about April 2009, plaintiff realized she could not
25 make the payments and contacted Countrywide Home Loans Inc. to

1 modify the loan.

2 Plaintiff was told she didn't qualify for a loan modification.

3 She tried several times to modify the loan.

4 16. Plaintiff contacted Bridgway Processing Services on June
5 11, 2009, still trying to modify the loan.

6 17. On or about December 01, 2009, Plaintiff could not make her
7 monthly payments. Plaintiff only had Social Security income of
8 about \$1,036.00 per month and was receiving food stamps.

9 18. Subsequently, on or about June 25, 2010, Plaintiff received
10 notice that a Notice of Default and Election to Sell Deed of
11 Trust ("Notice") had been recorded on the subject property. The
12 Notice was executed on June 23, 2010, and recorded on June 24,
13 2010. However, Plaintiff was not familiar with the entities set
14 forth therein. Specifically, the Notice stated that the Deed of
15 Trust executed by Plaintiff "was in favor of Mortgage Electronic
16 Registration Systems, Inc. ("MERS"), as Beneficiary, not
17 "Countrywide Home Loans Inc.". MERS was never a beneficiary of
18 Plaintiffs' loan. Additionally, MERS was never entitled to
19 receive payments from Plaintiff pursuant to the note and MERS was
20 not qualified to conduct business in the State of Oregon at the
21 time the Deed of Trust was executed.

22 Thus, MERS did not have legal standing or any legal right to
23 substitute the trustee under the Deed of Trust. Moreover, the
24 Notice listed RECONTRUST COMPANY, N.A. as the trustee and
25 RECONTRUST COMPANY, N.A. executed and recorded the Notice.

19. Notice was wrongful and improper because RECONTRUST
COMPANY, N.A. did not have the legal right to act as trustee

1 under the Deed of Trust dated 02,16,2007. Specifically, the
2 substitution of Trustee which allegedly substituted RECONTRUST
3 COMPANY, N.A. in as trustee was not executed until June 23, 2010
4 and was recorded until June 24, 2010.

5 20. Prior to receipt of Notice, Plaintiff did not receive any
6 telephone calls from Countrywide Home Loans.

7 21. Based on information and belief, there was no assignment of
8 the NOTE with the Deed of Trust, none of the Foreclosing
9 Defendants are the holder of the NOTE in due course, and none of
10 the Foreclosing Defendants were assigned the NOTE by Countrywide
11 Home Loans Inc. Accordingly, none of the Foreclosing Defendants
12 were ever entitled to enforce the NOTE.

13 **PREDATORY LENDING, FRAUD**

14 **15 USC 1606-1667F**

15 22. Plaintiff incorporate herein by reference the allegations
16 made in paragraphs 1-20 inclusive, as though fully set forth
17 herein.

18 23. At all relevant times herein, Countrywide Home Loans Inc.
19 agent for Countrywide Bank N.A. acting as Plaintiffs' lender, had
20 a duty to exercise reasonable care and skill in completing and
21 assisting in the Uniform Residential Loan Application.

22 24. On 02/05/2007, Mr. completed the loan application by phone
23 with Plaintiff. Mr. stated Plaintiff had employment income of
24 \$3,750.00, Mr. knew plaintiff was unemployed receiving food
25 stamps and had Social Security income of \$1,036.00 per month, as
plaintiff had suffered a stroke in November 2006.

1 25. Plaintiff had rental income of \$1,500.00 per month however,
2 after the mortgage, insurance and taxes were paid was negative
3 \$601.00. Plaintiff reported to the Internal Revenue Service a
4 gross income for tax year 2006, \$14,682.00.

5 26. Plaintiff never signed the Uniform Residential Loan
6 Application, Mr.s' signature is the only one on the application
7 dated 02/05/2007.

8 27. As a direct and proximate result of the lending practices
9 under TILA 15 USC 1605, HOEPA 15 USC 1639 alleged against
10 Countrywide Home Loans Inc., agent for Countrywide Bank N.A.,
11 Plaintiff suffered general and special damages in an amount to be
12 determined at trail.

13 BROKEN CHAIN OF TITLE

14 28. Plaintiff incorporates herein by reference all the
15 allegations made in paragraphs 1-26, inclusive, as though fully
16 set forth herein.

17 29. Plaintiff is unsure as to when Bank of America became the
18 servicer of the loan. Plaintiff never received anything by mail,
19 or telephone that Bank of America was the servicer of the loan.

20 30. Bank of America is not the holder of the NOTE, Bank of
21 America is not on any Deed of Trust, Bank of America is alleged
22 to be one of the foreclosing defendants.

23 31. On Thanksgiving Day 11/25/2010, Plaintiff received a
24 telephone call from a Bank of America agent (Lori) asking if
25 Plaintiff had moved from the property, where was the Plaintiff
going to go, how was Plaintiff planning on paying. Plaintiff

1 explained she had not moved, she had nowhere to go and, she had
2 no money to pay.

3 32. Plaintiff is 70 years old, living on a fixed income.

4 33. Bank of America, BAC Home Loans, LP., has no claim to the
5 subject property.

6 34. Plaintiff further allege on information and belief that the
7 loan was sold or transferred without notifying the Plaintiff in
8 writing. Therefore, the loan is void of legal rights to enforce.

9 35. Plaintiff tried on several occasions to remodel the loan
10 starting in October 2008.

11 FRAUD

12 MERS

13 36. Plaintiff incorporate herein by reference the allegations
14 made in paragraph 1 through 35, inclusive, as though fully forth
15 herein.

16 37. MERS operates as a record-keeping database company in which
17 MERS contracts with lenders to track security instruments in
18 return for an annual fee.

19 38. Based on information and belief, MERS was at all times
20 herein operating in the State of Oregon without registering as a
21 foreign corporation to avoid paying taxes to the state.

22 39. As a result of MERS failure to comply with the Oregon tax
23 laws, the Deed of Trust, dated 02/16/2007 alleged herein is
24 voidable by Plaintiff pursuant to Rev and Tax codes of Oregon.

25 40. Moreover, MERS is not in the business of creating
evidences, and it is not a foreign lending institution. It does

1 not originate loans, never had any true interest in the subject
2 loan or Deed of Trust, and thereby does not meet any legal
3 exceptions to the registration requirement for a foreign
4 corporation.

5 41. MERS conducted business in Oregon when it was not
6 registered with the Secretary of State. Specifically, it prepared
7 and/or executed a Substitution of Trustee and assignment of Deed
8 of Trust in February 16, 2007. The substitution allowed the new
9 Trustee, RECONTRUST COMPANY, N.A., to record a Notice of Default
10 on the Subject Property.

11 42. At all relevant times herein, MERS was not registered in
12 Oregon and could not prepare or execute the Deed of Trust. MERS
13 had no legal authority to take such action. Deeds of Trust are
14 contractual in nature. A contract made by a corporation doing
15 business in Oregon while that corporation has failed to perform
16 its tax obligations is voidable at the option of any party to the
17 contract, other than the (delinquent taxpayer). Thus, MERS did
18 not have the legal capacity to enter into a contract with the
19 Plaintiff or anyone else, and Plaintiff have the option of
20 voiding the contract. Any action that MERS took with regard to
21 assigning the within deed of trust and substituting the trustee
22 would be void. It should be noted MERS didn't register with
23 Oregon until 02/25/2010.

24 43. Plaintiff hereby expressly request an adjudication to the
25 effect that the assignment of the deed of trust and substitution
of the trustee by MERS are void.

WRONGFUL FORECLOSURE

44. Plaintiff incorporate herein by reference the allegations made in paragraphs 1 through 43, inclusive, as though fully set forth herein.

45. Plaintiff is informed and believe and thereon allege that after the origination and funding of her loan, it was sold to investors as a "mortgage backed security" and that none of the foreclosing defendants in this action owned this loan, or the corresponding note. Moreover, none of the foreclosing defendants in this action were lawfully appointed as trustee or had the original note assigned to them. Accordingly, none of the foreclosing defendants in this action had the right to declare default, cause notice of default to be issued or recorded, or foreclose on Plaintiffs' interest in the Subject Property. The foreclosing defendants were not the note holder or a beneficiary at any time with regard to Plaintiffs' loan.

46. Plaintiff further allege on information and belief that none of the Foreclosing Defendants in this action are beneficiaries or representatives of the beneficiary and, if the Foreclosing Defendants allege otherwise, they do not have the original note to prove that they are in fact the party authorized to conduct the foreclosure.

47. Plaintiff allege on information and belief that the loan was sold or transferred without notifying the Plaintiff in writing. Therefore, the loan is void of legal rights to enforce it.

1 48. Plaintiff further allege the Notice of Default and Election
2 to Sell states that Plaintiff is to pay the beneficiary, MERS to
3 stop the foreclosure.

4 **TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

5 49. Plaintiff incorporate herein by reference the allegations
6 made in paragraph 1 through 48, inclusive, as though fully set
7 forth herein.

8 50. The Foreclosing Defendants never had the legal authority to
9 foreclose, i.e., the authority to exercise the power of sale as
10 an assignee of the Note and Deed of Trust. Foreclosing Defendants
11 never had the legal authority to foreclose because the instrument
12 (Deed Of Trust), which permitted foreclosure if the borrower was
13 in default, is void as it improperly assigned and/or transferred
14 to the Foreclosing Defendants from the original lender.
15 Therefore, the Deed of Trust could not provide a basis for a
16 foreclosure, and the non-judicial foreclosure is void.

17 51. The assignment of the deed of trust is invalid, and of no
18 force and effect, for the reason set forth, the fact that MERS
19 did not have standing or the legal authority to assign the deed
20 of trust which purportedly secured the NOTE, and which served as
21 a basis for a claim to have the right to conduct a non-judicial
22 foreclosure. Thus, the assignment of the deed of trust was at all
23 times void. Bank. No. 08-31282-el7, 2010 WL 3366405, at *10,
24 National Bank vs. Kesler, 40 Kan. App. 2d 325, 192 P. 3d 177,
25 2009. Bellistri v. Ocwen Loan Servicing, LLC, 284 S.W.3d 619,
623-24 (Mo. Ct. App. 2009) (in spite of deed language purporting
to transfer the promissory note, MERS never held the note and the

1 lender never gave MERS the authority to transfer the note; thus
2 MERS' transfer of the deed of trust, separate from the NOTE, was
3 ineffective and the successor lender lacked a legal cognizable
4 interest in the property); Saxon Mortg. Serv., Inc. v. Hillery,
5 No. C-08-4357 EMC, 2008 WL 5170180, at *5 (N.D. Cal. Dec. 9,
6 2008).

7 52. Plaintiff is a 70 year old, single female, with health
8 Issues. Plaintiff believes she will likely succeed on the merits,
9 that she is likely to suffer irreparable harm in the absence of
10 preliminary relief, that the balance of equities tips in her
11 favor, and that an injunction is in the public interest.

12 53. Plaintiff believes it is the spirit of the law to protect
13 the victims of fraud and deceptive practices. Plaintiff
14 respectfully request this Honorable Court to review all exhibits,
15 grant a TRO and Preliminary Injunctive Order in favor of
16 Plaintiff.

17 Plaintiff asks the Court to toll time, (Doctrine of Equitable
18 Tolling), King v. State of California, 784 F.2d 910, 915 (9th
19 Cir. 1986), as the Plaintiff has just discovered the violations.

20 Wherefore, Plaintiff prays for judgment against the Defendants
21 and each of them, jointly and severally, as follows:

- 22 1. For declaration of the rights and duties of the parties,
23 specifically that the foreclosure of Plaintiffs' residence was
24 wrongful.
- 25 2. To vacate the Trustee's Deed.
3. To vacate and set aside the foreclosure sale. Grant the TRO
and Preliminary Injunction.

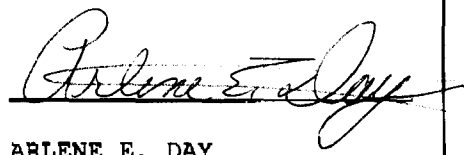
1 4. For all compensatory, special, general and punitive
2 damages according to proof.

3 5. For reasonable attorney fees and costs according to proof.

4 6. For reasonable costs of suit and such other and further relief
5 as the Court deems proper.

6 I declare under the penalty of perjury and under the laws of
7 the United States of America that the foregoing is true and
8 correct.

9
10 Date: 12-02-2010


ARLENE E. DAY